IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 114 OF 1999

1. Mr. Domnik Savio Kenny,
   major,
   presently working as
   Office Superintendent,
   Damodar College of
   Commerce & Economics,
   Margao, Goa.

2. Mr. S. P. Naik Parsekar,
   major,
   presently working as
   Accountant,
   V. M. Salgaokar College
   of Law, Miramar, Panaji,
   Goa.

3. Mr. Kishore Manohar Kantak,
   major,
   presently working as
   Head Clerk,
   G. V. M. G.G.Raiturkar
   College of Commerce &
   Economics, Ponda, Goa.

4. Mr. Anil Datta Lotlikar,
   major,
   presently working as
   Senior Clerk,
   G. R. Kare College of Law,
   Margao, Goa.

5. Ms. Maria Esperanca Fernandes,
   major,
   presently working as
   Junior Clerk,
   Damodar College of Commerce &
   Economics, Margao, Goa.

6. Mr. Shantaram Keshav Kirtani,
   major,
   presently working as
   Library Clerk,
   Damodar College of Commerce &
   Economics, Margao, Goa.

7. Mr. Sambhaji L. Naik,
   major,
   presently working as
   Peon,
   Smt. Parvatibai Chowgule
   College of Arts & Science,
   Margao, Goa.

8. Mr. Udai B. Naik,
major,
presently working as
Peon,
Smt. Parvatibai Chowgule
College of Arts & Science,
Margao, Goa. ... Petitioners

versus

1. State of Goa,
through the Secretary(Education),
Government of Goa,
Secretariat,
Panaji, Goa.

2. The Joint Secretary/
Director of Higher Education,
Directorate of Higher Education,
Junta House, 5th Floor,
Panaji, Goa.

3. Goa University,
through its Registrar,
Bambolim Plateau,
Ilhas, Goa. ... Respondents.

Mr. S. D. Lotlikar, Senior Counsel with Ms. S. Naik, Advocate for the Petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. R. Bharne, Government Advocate for Respondent Nos.1 and 2.

Mrs. A. A. Agni, Advocate for Respondent No.3.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE : 28TH JULY, 2004.

ORAL JUDGMENT(PER S.A.BOBDE,J.)

By this Petition under Article 226 of the

Constitution of India, the Petitioners seek a writ, order or direction for quashing the Order dated 31st March, 1998, issued by the Directorate of Higher Education, Government of Goa. By this Order, the Government of Goa has sanctioned the Vth Pay Commission Scale of the non-teaching staff and has fixed the existing pay scales mentioned in Column No.1 in accordance with the Vth Pay scales sanctioned by the Vth Pay Commission. The Petitioners also seek a writ of mandamus or any other writ in the nature of mandamus seeking the benefit of an Order dated 27th October, 1997, by which the Respondent/Government has directed that the Petitioners pay fixation shall be done with reference to the pay scales of the IVth Pay Commission from 1st January, 1986 and not with reference to the revised interim scales given by the Goa Government after 1st January, 1986. The Petitioners also seek a writ of mandamus directing the Respondents to extend the benefits of the interim revised pay scales in terms of the Order dated 27th October, 1997 for payment of necessary monetary benefits in terms thereof.

2. Briefly, the relevant facts are that the Petitioners are employees of Aided Non-Government Colleges in the State of Goa which were affiliated to the University of Bombay. In the year 1978, the Government of Goa conveyed sanction to the said Colleges as per the

terms and conditions laid down by the University of Bombay. In the same year, the Government of Maharashtra conveyed sanction to the pattern of assistance of the non-teaching staff of the University of Bombay vis-a-vis the non-teaching staff affiliated to the University.

3. On 19th June, 1986, with the establishment of the Goa University all the educational institutions in the State of Goa came to be affiliated to the Goa University. It was resolved that the Service Conditions for the teaching and non-teaching staff of the Non-Government Aided Colleges affiliated to the University that the Service Conditions will continue to be operative, till such time the Goa University frames its own Rules.

4. On 12th March, 1990, the Government of Goa in terms of the IVth Pay Commission prescribed IVth Pay revised pay scales to the members of the non-teaching staff of the Non Government Aided Colleges to come into effect from 1st January, 1986. At this point a crucial aspect arises. Before the establishment of the Goa University, a Government servant with the Government of Goa drew salary on a scale which is less than that of an University employee of the Bombay University in an equivalent post. As a result, in order to prevent a reduction in the salary due to absorption in the Goa

University and the implementation of the IVth Pay Commission, the Petitioners were fixed in personal scales which protected their higher salary with the Bombay University. The Petitioners case basically rests on this fact. On the basis of this fact, the Petitioners contend that while fixing their pay scales under the Vth Pay Commission, the higher scale granted to them at the time of fixation in the IVth Pay Commission i.e. the one that was fixed in order to protect their higher scale should be made the basis. According to the Respondent/Government, the Petitioners were granted personal scales while fixing their salaries under the IVth Pay Commission and while making such fixation while implementing the Vth Pay scales the personal scales granted to the Petitioners should be ignored. The comparative statement of the pay scales of the various posts in respect of which this Petition is filed would be useful. The said comparative statement is as follows:-

Sr. No.	Designation of the post.	Scale of pay of Goa Government			Unrevised Scales under CPIR	Personal Scales after IVth Pay Commission.	Corresponding Vth Pay Commission Pay Scales claimed.
		As per 3rd Pay Commission	As per 4th Pay Commission	As per 5th Pay Commission Entitled			
1.	2.	3.	4.	5.	6.	7.	8.
1.	Peons/ Watchman/ Sweeper/	196-232	750-940	2550-55-2660-60-3200.	200-280	800-1150	2650-65-3300-70-4000.

1.	2.	3.	4.	5.	6.	7.	8.
	Lab. Attendant/ Library Attendant & other Class IV employees.				205-355	950-1400	3050-75-3950-80-4500.
2.	Typist Clerks/ Library Clerks/ Lab. Asstt./ Clerk cum Typist.	260-400	950-1500	3050-75-3950-80-4590.	260-495	975-1660	3200-85-4900.
3.	Sr.Clerk/ Steno.Jr.	330-560	1200-2040	4000-100-6000.	335-680	1350-2200	4500-125-7000.
4.	Head Clerk/ Sr.Steno.	425-700	1400-2300	4500-125-7000.	395-800	1400-2600	5000-150-8000.
5.	Accountant.	425-700	1400-2300	4500-125 7000.	500-900	1640-2900	5500-175-9000.
6.	Superintendent.	425-700	*1600-2660	5000-150 8000.	500-900	1640-2900	5500-175-9000.

*(wrongly mentioned as 1640-2900 in Order dated 12-3-90).

5. As an example, according to the Petitioners, the Column Nos.3, 4 and 5 of the Statement show the scales of a Goa Government servant of equivalent rank.

The Petitioners claim that after the IVth Pay Commission, such persons were given the scale as mentioned in Column No.7. Therefore, they should be paid the corresponding Vth Pay Commission scales w.e.f. 1st September, 1996. Thus, taking the post of Peon at Item No.1 above, such a Peon who was granted a personal scale after the IVth Pay Commission of 800-1150 should be granted the corresponding Vth Pay Commission pay of 2750-4000 and not 2550-3200((Column No.5) which has been granted on the basis of which a Government servant who was in the IVth Pay Commission scale of 750-940 would be entitled. In other words, according to the Petitioners the IVth Pay Commission scale in which Government servants were fixed should be ignored and what should be taken into account is the personal scale in which the Petitioners were fixed for the purposes of fixing their pay scales under the Vth Pay Commission.

6. Mr. S. D. Lotlikar, learned Senior Counsel for the Petitioners relied on a decision of the Division Bench of this Court in Writ Petition No.297 of 1991 rendered on 4th February, 1998 and another decision of this Court in Writ Petition No. 397 of 1999 dated 29th July, 2003. On the basis of these decisions, the learned Senior Counsel submitted that the Petitioners are entitled to have their pay scales revised on the basis of their fixation of pay scales as on 1st January, 1986. We

find that these decisions have no application to the present case in view of the fact that the Petitioners in those cases were at no point of time granted a personal pay scale because their existing scale had to be protected while fixing their pay scales under the IVth Pay Commission and there was no question of fixing their pay scales under a subsequent pay revision such as under the Vth Pay Commission occuring in the present case.

7. The Petitioners relied mainly on an Order of the Goa Government dated 27th October, 1997, paragraph 3(a)(i) which reads as follows:-

> "3. Now, therefore, Government of Goa hereby directs as under:- a) That Central Civil Services(Revised Pay) Rules, 1997 as notified under G.S.R. 569(E) dated 30-9-1997 of the Government of India, Ministry of Finance be adopted and made applicable to the employees of Government of Goa with effect from 1.1.1996 subjct to the following conditions:-
>
> Pay fixation in the proposed scales(Fifth Pay Commission) shall be done with reference to pay/pay scales of the Fourth Pay Commission existing as on 1-1-1996 and not with reference to revised/interim revised scales given by Goa Government after 1-1-86. All

revisions for Secretariat and non-Secretariat staff consequent upon implementation of Fourth Pay Commission Report from 1-1-1986 shall be ignored for the purpoe of equation of pay scales as well as fixation of pay. Option to retain old pay in the revised/interim revised pay scales given after 1-1-1986 shall not be available".

8. Mr. A. N. S. Nadkarni, learned Advocate General for the Respondent Nos.1 and 2 has strongly opposed the above contention. He submits that the Petitioners, none of whom was a Government servant, are entitled for the pay fixation only on the basis of the scales which a Government servant should receive under the IVth Pay Commission and not on the basis of personal scales to which they were granted after the IVth Pay Commission. Thus, in the above comparative statement it is seen that the Petitioners are entitled, according to the Respondents to be fixed on the basis of the scales of pay to which a Government servant was eligible under Column No.4 and not on the basis of the personal scale under Column No.7.

9. We consider it appropriate to uphold the contention of the Respondent/State in this regard. Clause 11 (iii) of an Agreement dated 9th June, 1987,

between the University of Bombay and the University of Goa which took the Centre of Post Graduate Instruction & Research(C.P.I.R.) provided as follows:-

> "(iii) The service conditions applicable to the teaching and non-teaching staff at the C.P.I.R. would be protected and continue to operate after 1st June, 1985, when the Goa University prepares relevant statutes governing the service conditions of all its teaching and non-teaching staff, the Goa University would take care to see that such conditions would not adversely affect the staff".

10. It is, therefore, in pursuance of this Agreement that eventhough, the Petitioners would otherwise have been fixed at par with Government servants in the lower pay scales i.e.(Column No.4) they were granted a personal scale which was higher than that in order to protect the scales they were receiving under the University of Bombay(Column No.7) higher than the corresponding pay scales. Eventhough, the Agreement governs only the employees of the C.P.R.I, it appears obvious that the same principle has been followed while granting personal pay scales to the other teaching and non-teaching staff of the Non Aided Government Colleges who were previously affiliated to the Bombay University. But for a special reason as this, there is no other

reason why the employees who were formally employed by Colleges affiliated to the Bombay University would have been given a higher pay scale than that provided to the Government of Goa employees, persons holding corresponding posts in the Government Colleges. It further appears reasonable to us that it was not necessary for the Government to consider the personal scales granted to the Petitioners while applying the Vth Pay Commission scales w.e.f. 1st January, 1996, on the basis of such personal scales.

11. In our view, the Government was entitled to take into account the scales which the members of the staff in corresponding scales with the Government received under the IVth Pay Commission. In fact, if this is not done, in our view, it would lead to a discrimination whereby employees, otherwise at par, would receive different scales, some higher and some lower, while being fixed under the Vth Pay Commission under the same Rules and even under the same University. As an illustration, members of the non-teaching staff who were not in a College which was formally affiliated to the Bombay University would be fixed in a lower scale of pay than the employees of a College which was affiliated to the Bombay University and who were granted a special pay at the time of pay fixation of the IVth Pay Commission.

12. As a result, we find that the Petitioners are not entitled to having the impugned Order dated 31st March, 1998, fixing the scale under the Vth Pay Commission set aside since the scales are fixed on the basis that their existing pay scales are those of persons holding corresponding posts in other Colleges and the Government.

13. The next contention raised on behalf of the Petitioners is that the Petitioners are entitled to the benefits of interim revision which were granted to Government servants under an Order dated 31st July, 1996 and also to certain members of the non-teaching staff who were non-teaching staff of the Non Aided Colleges who were appointed after 1st April, 1989. This contention is also strongly opposed by the learned Advocate General who submits that the interim revision that was granted was meant to be an interim measure, the benefits of which were meant to merge in the pay fixation under the Vth Pay Commission. In fact, the Government has issued an Order dated 27th October, 1997, the relevant part which reads as follows and the reproduced para 3(a)(i), part of which is reproduced earlier reads as follows:-

> **"Note 2:** Salary actually drawn in Fourth Pay Commission scales including interim revised scales for the period from 1-1-96 till 31-10-97 shall be adjusted

against the arrears of pay and allowances due to and admissible on the basis of revised pay scales for the same period from 1-1-96 till 31-10-97.

If pay and allowances (pay + dearness allowances + House Rent Allowances + city Compensatory Allowance) due and admissible in the revised pay scale(Vth Pay Scale) are found to be less than the total salary(Pay + Dearness Allowances + 3 Interim Reliefs + House Rent Allowance and City Compensatory Allowance) actually drawn between the period 1-1-96 to 31-10-97, the excess amount paid shall be ignored and no recoveries or adjustments made from the arrears due and admissible".

"1. Whereas Government of India has since issued Notifications/O.Ms/Orders regarding the Fifth Central Pay Commission recommendations on pay scales and other aspects like Dearness Allowances, House Rent Allowances, City Compensatory Allowance and Transport Allowance".

"3. Now, therefore, Government of Goa hereby directs as under:-

(a) That Central Civil Services(Revised Pay) Rules, 1997 as notified under G.S.R. 569(E) dated 30-9-1997 of the Government of India, Ministry of Finance be adopted and made applicable to the employees of Government of Goa with effect from 1-1-1996 subject to the following conditions:-

(i) Pay fixation in the proposed scales(Fifth Pay

> Commission) shall be done with reference to pay/pay scales of the Fourth Pay Commission existing as on 1-1-1996 and not with reference to revised/interim revised scales given by Goa Government after 1-1-86. All revisions for Secretariat and non-Secretariat staff consequent upon implementation of Fourth Pay Commission Report from 1-1-1986 shall be ignored for the purpose of equation of pay scales as well as fixation of pay. Option to retain old pay in the revised/interim revised pay scales given after 1-1-1986 shall not be available".

14. It must be noted that eventhough the Order dated 27th October, 1997, is primarily meant for Government servants, it has been applied by the Government to the employees of the non-teaching staff of the Aided Colleges as is apparent from the impugned Order dated 31st March, 1998.

15. It is, therefore, clear that in terms the benefits of an interim revision is not available to a member of the non-teaching staff of an Aided Non Government College since such benefit is meant to be merged in the Vth Pay Commission scale. Indeed, it cannot be that the scale available to an employee under the Vth Pay Commission confers a benefit twice over. Moreover, it appears that this Court has in Writ Petition Nos.322 of 1998 and 138 of 1999 repelled a challenge to

the Order dated 27th October, 1997 and this position has been noticed by this Court in Writ Petition No.12 of 2000 decided on 29th July, 2003. It is thus clear that the benefit of the interim revision is not available to the Petitioners in the course of their fixation of their scales under the Vth Pay Commission or for the same reason they are not entitled to 40% weightage on the interim revision pay scale as has been done in the case of other Government employees and other members of the non-teaching staff or Non Aided Government Colleges.

16. In this view of the matter, we find no merit in this Petition. Rule is, therefore, discharged.

S. A. BOBDE, J.

N. A. BRITTO, J.

RD.